IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Income Tax Application No. 66 of 1999

The Commissioner of Income-Tax, Mumbai .. Applicant
V/s.
M/s. Diners Business Services
P. Ltd., Mumbai - 21. .. Respondent

Mr. E.P. Chopra for the Applicant
Mr. Subhash S. Shetye i/b. Mr. Ushal Dalal for the Respondent

CORAM : S. RADHAKRISHNAN &
A.S. AGUIAR, JJ.
DATED : 20.06.2005.

P.C.:-

1. Heard the learned counsel for the Applicant and the Respondent. The above Income Tax Application filed by the Revenue, seeking reference on the following question of law :-

> "Whether on the facts and in law and circumstances of the case, the Hon'ble ITAT was right in law in upholding the Ld. CIT (A)'s order in deleting the addition of Rs. 2,70,700/- charged as entrance fees from members treating it as capital receipts."

2. The learned counsel appearing on behalf of the Respondent pointed out that on an identical issue, Division Bench of this Court in **Commissioner of Income Tax v. Diners Business Services Pvt. Ltd. (2003) 263 ITR 1,** has considered the very same issue and the Court has observed as under:-

> "As stated above, the Assessing Officer made an addition of Rs. 4,08,950 to the income of the assessee on account of non-refundable entrance fees

received by the assessee. The Commissioner (Appeals) found that the entrance fees were charged

by the assessee for enrolment of its customers as members of the "executive centre". The entrance fees were a one-time fee and only members were eligible to avail of the facilities available in the "executive centre". The Commissioner (Appeals) found that the entrance fees were non-refundable. In the case of **CIT v. W.I.A.A. Club Ltd. [1982] 136 ITR 569 (Bom)**, it has been held that the entrance fees were paid to the club in order to acquire the right to avail of services and facilities extended by the club. It was held that the entrance fees constituted receipt in the capital field. Hence, the Commissioner (Appeals) ordered deletion of Rs. 4,08,950 made by the Assessing Officer on account of non-refundable entrance fees received by the assessee. In view of the judgment of the Bombay High Court in the case of **CIT v. W.I.A.A. Club Ltd. [1982] 136 ITR 569**, the Tribunal was right in ordering deletion of Rs. 4,08,950 made by the Assessing Officer on account of non-refundable entrance fees."

3. Under these circumstances, we are also answering the question in the affirmative in favour of the assessee and against the Revenue. The Application stands disposed of.

(S. RADHAKRISHNAN, J.)

(A.S. AGUIAR, J.)